



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II

290 BROADWAY

NEW YORK, NEW YORK 10007-1866

MAR 25 2010

VIA FEDERAL EXPRESS

Phelps Dodge Refining Corporation
c/o L. Richards McMillan II
Senior Vice President & General Counsel
Freeport-McMoRan Copper & Gold Inc.
One North Central Avenue
Phoenix, AZ 85004-4414

Re: Newtown Creek Superfund Site, Kings County and Queens County, New York

Notice of Potential Liability Pursuant to the Comprehensive Environmental Response,
Compensation, and Liability Act, 42 U.S.C. Sections 9601-9675

Dear Mr. Steinberg:

The U.S. Environmental Protection Agency ("EPA") is charged with responding to the release or threatened release of hazardous substances, pollutants and contaminants into the environment and with enforcement responsibilities under the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. Sections 9601-9675, (also known as the "Superfund" law). More information about CERCLA, including a copy of the Superfund law, may be found at www.epa.gov/superfund.

EPA has documented the release and threatened release of hazardous substances into the environment at the Newtown Creek Superfund Site (the "Site"), located in Kings County and Queens County, New York. EPA has proposed the Site for listing on the national priorities list, a list of national priorities among the known releases and threatened releases throughout the United States, which list was established and is updated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605. In response to the release and threatened release of hazardous substances into the environment at the Newtown Creek Site, EPA has spent public funds and anticipates spending additional public funds pursuant to CERCLA in performance of response actions at or in connection with the Site.

Newtown Creek is a tidal arm of the New York-New Jersey Harbor Estuary that forms the northwestern-most border between the New York City boroughs of Brooklyn and Queens. It is a tributary of the East River and it itself includes five branches (or tributaries) along its 3.8-mile reach. Historically, Newtown Creek drained the uplands of western Long Island and flowed through wetlands and marshes. However, due to heavy industrial development dating from the

1800s, formerly wet areas have been filled, the Creek has been channelized, and its banks have been stabilized with bulkheads and rip rap.

By the 1850s, the area surrounding and adjacent to Newtown Creek had become highly industrialized. By 1870, more than 50 petroleum refineries were located along the banks of Newtown Creek and, by the close of the 19th century, the Creek was lined with oil refineries and petrochemical plants, fertilizer and glue factories, copper-smelting and fat-rendering plants, shipbuilders, sugar refineries, hide tanning plants, canneries, sawmills, paint works, and lumber and coal yards. During its industrial past, Newtown Creek was crowded with commercial vessels, including large boats bringing in raw materials and fuel and taking out oil, fat, varnish, chemicals, and metals. However, as the region developed, wetlands, marshes surrounding the Creek and portions of the Creek and its tributaries were filled or otherwise covered over, and nearly the entire Creek was lined with bulkheads, cutting off natural freshwater flow so that the current flow into Newtown Creek consists largely of storm water runoff, combined sewer overflows, and discharges from permitted and unpermitted pollution sources.

The Site includes contaminated sediments for which there are numerous possible sources. Sampling events have shown the sediments in the Creek to be contaminated with a variety of hazardous substances which traverse almost the entire length of the Creek, and which include a wide variety of metals, pesticides, polycyclic aromatic hydrocarbons, phthalates, polychlorinated biphenyls and volatile organic contaminants.

The contaminants may have entered Newtown Creek via several transport pathways or mechanisms, including spillage during product shipping and handling, direct disposal or discharge, contaminated groundwater discharge, surface water runoff, storm water discharge and contaminated soil erosion.

Under CERCLA and other laws, responsible parties may be held liable for monies expended by the federal government in taking response actions at and around sites where hazardous substances have been released, including investigative, planning, removal, remedial, and enforcement actions. Responsible parties also may be subject to orders requiring them to take response actions themselves.

Responsible parties under CERCLA include current or past owners or operators of a facility or persons who arrange for disposal or treatment of hazardous substances at a facility, from which there is a release or a threatened release of a hazardous substance which causes the incurrence of response costs.

EPA has evaluated information obtained in connection with the Site which indicates that hazardous substances were released from facilities that are currently owned or operated or that were formerly owned or operated by Phelps Dodge Refining Corporation, or predecessor companies of Phelps Dodge Refining Corporation, which facilities are located adjacent to or in very close proximity to Newtown Creek, that hazardous substances were disposed of at such

facilities at the time of such ownership or operation, and that hazardous substances from such facilities were released into Newtown Creek. Thus, by this letter, EPA is notifying you that the EPA has reason to believe that Phelps Dodge Refining Corporation is a potentially responsible party with respect to the Site pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

If you have any questions regarding the Notice of Potential Liability or otherwise regarding the Site, please call Michael A. Mintzer of EPA Region 2's Office of Regional Counsel at (212) 637-3168 with respect to legal matters, or Caroline Kwan of EPA Region 2's Emergency and Remedial Response Division at 212-637-4275 with respect to technical matters.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Raymond Barso", is written over the typed name.

Raymond Barso, Strategic Integration Manager
Emergency and Remedial Response Division

cc: Michael Steinberg, Esq.
Morgan, Lewis & Bockius LLP